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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 05-00161 HG
	)	
Plaintiff,	)	AMENDED GOVERNMENT'S RESPONSE
	)	TO THE PROPOSED PRESENTENCE
vs.	)	REPORT
	)	
JAY PADAYAO,	)	Sentencing date: 07/20/06
	)	Time: 1:30 p.m.
	)	Chief Judge Helen Gillmor
Defendant.	)	
	)	

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**AMENDED GOVERNMENT'S RESPONSE TO THE  
PROPOSED PRESENTENCE REPORT**

As to Paragraph 78:

The report incorporates the recent decision of *United States v. Piccolo*, 441 F.3d 1084 (9th Cir. 2006), in concluding that escape is not a "crime of violence." The Court should be aware that the government has filed a Petition for Rehearing En Banc in *Piccolo* and that petition is still pending. The government respectfully requests that the sentencing date be continued until the Ninth Circuit acts on the petition. There also is a possibility that if the Ninth Circuit rejects the

petition, the government may seek a writ of certiorari with the Supreme Court.

The United States has no other objections or comments to the Proposed Presentence report.

DATED: June 19, 2006, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.  
United States Attorney  
District of Hawaii

By /s/ Marshall H. Silverberg  
MARSHALL H. SILVERBERG  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served Electronically through CM/ECF:

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DATED: June 19, 2006, at Honolulu, Hawaii.

/s/ Cheri Abing